

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
Review of the Section 251 Unbundling)	
Obligations of Incumbent Local)	CC Docket No. 01-338
Exchange Carriers)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act)	CC Docket No. 96-98
Of 1996)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	

**OPPOSITION OF
US LEC CORP. TO
BELLSOUTH TELECOMMUNICATIONS, INC.’S
PETITION FOR WAIVER**

US LEC Corp., on its behalf and on the behalf of its subsidiaries¹ (collectively, “US LEC”), pursuant to the Public Notice issued by the Federal Communications Commission (“FCC”) inviting comments on the Petition for Waiver in the above-styled proceeding, hereby respectfully files its opposition to BellSouth Telecommunications, Inc.’s Petition for Waiver. In support of US LEC’s position, the following information is provided:

1. US LEC provides local exchange services and access service in each of the BellSouth states. US LEC is a facility-based provider and provisions unbundled network elements (“UNE”) from BellSouth pursuant to an interconnection agreement in each BellSouth state. US LEC has ordered, and continues to order, UNE loops and enhanced extended loops (“EELs”) from BellSouth.

¹ The following US LEC subsidiaries provide telecommunications services in the BellSouth states: US LEC of Alabama Inc.; US LEC of Florida Inc.; US LEC of Georgia Inc.; US LEC of Tennessee Inc.; US LEC Communications Inc.; US LEC of North Carolina Inc.; US LEC of South Carolina Inc.

2. BellSouth seeks to be permitted to “hold” requests from carriers under the new EEL requirements implemented under the FCC’s Triennial Review Order (“TRO”). It claims that it needs the additional time to “develop the ordering and provision processes applicable to the revised EEL requirements.” The thrust of BellSouth’s argument is that there will be wasted resources if it is required to convert or provision a circuit as a UNE and then convert the circuit back to a wholesale service in the future. BellSouth also suggests that there is likely to be stranded capital investment if it should be required to provision commingled UNE and special access circuits and then convert these circuits back to a non-commingled circuit. BellSouth’s solution, therefore, is to hold any orders until it is clear what circuits will be subject to an unbundling obligation and which will not.

3. BellSouth only cites to Florida as a state in which it might be able to demonstrate that it had a possibility of being relieved of unbundling obligations for dedicated transport. It provides no support for any of the other eight states in which it does business. Even if BellSouth were to be relieved of such obligations on certain routes in Florida to provide dedicated transport on an unbundled basis, a CLEC would be entitled to a commingled EEL, and a complete conversion of the circuits back to special access would not be the likely outcome.

4. The effect of the BellSouth proposal is to force all competitive LECs to order and pay for special access circuits until the expiration date of the waiver.² If the waiver is granted, BellSouth has a win-win situation – it has not been required to meet its

² If a CLEC is unable to convert its special access circuits to EELs, it will continue to pay the special access rates. If a CLEC is ordering a new circuit to provision service to its end user and cannot obtain the circuit pursuant to its interconnection agreement, if it wants to keep its end user, it will be required to order a special access service to meet due dates requested by the end user.

obligations under the Act and has incurred no costs that it alleges it would incur implementing such obligations and collects a higher rate for the circuits -- decreased expenses plus increased revenue equals a windfall of a higher profit margin. On the other hand, the CLEC's costs will increase as it must pay the higher rate for the circuit, but the revenue it collects from its end user remains the same, and it will have a decrease in its profit margins.

5. Conversion from special access to EELs is not a new requirement for BellSouth to implement. Nor is provisioning of new EELs a new process for BellSouth. US LEC's interconnection agreements with BellSouth have permitted it to convert special access to EELs and order new EELs since 2000. The eligibility criteria have changed, but that should not change any of the processes that have worked in the past. Thus, US LEC is at loss to understand what additional costs BellSouth will incur at this late date to convert special access to UNEs or to provision new EELs that it has not already incurred.

6. BellSouth asserts that it is a waste of resources to have to convert from special access to UNE and then back again in such a short period. However, for the savings that will accrue to the requesting carrier during such time period, the process of submitting another conversion request is fully offset with the reductions of cost during the period that the UNE pricing was charged. US LEC suggests that BellSouth concern is that BellSouth will lose the ability to charge the special access rates from the date the conversion order is submitted to convert from UNE to special access rather than its claimed "waste of resources."

7. In the conversion process from special access to UNE, BellSouth has been known to extend the period between the time the request for conversion is submitted and the

effective date of the conversion. The pricing change does not occur until the effective date of the conversion. BellSouth does not provide any retroactive credit for the price differential from the date the conversion is requested and when the conversion is deemed completed. US LEC would anticipate that a similar delay would occur during the conversion from UNE to special access, and the CLECs would enjoy the lower rates until the effective date of the conversion, which seems a reasonable and just result as the conversion process has been controlled by BellSouth from the inception.

8. BellSouth had ample opportunity in the past several years to create a system that facilitated such conversions. It apparently elected not to do so because the delay was to its advantage. Had it taken the initiative to make the conversion process less cumbersome, it would not have the concern today of wasted resources of converting special access to UNE and then from UNE back to special access in the event its unbundling obligations are eliminated. Additional costs or administrative burdens that are a result of BellSouth's own decision should not be the basis of a "good cause" finding by the Commission.

9. BellSouth also claims that it will incur additional capital investments because it will be required to invest in equipment to delineate the UNE circuit from a special access circuit in a multi-leg commingled circuit. Based on its *ex parte* presentation to the FCC in January 2004, BellSouth asserts that it must add equipment and redesign its network to be able to distinguish, for service quality and reporting requirements, whether a circuit is a UNE or a special access circuit where the circuits are commingled in a multi-leg circuit. US LEC questions the need for such new equipment, and is unable to determine why BellSouth would rearrange a straight "home run" circuit (as reflected in BellSouth's

diagrams, *Ex Parte* at 9–11) for purposes of converting the circuit to a UNE. Nor does BellSouth discuss other temporary options that could be employed rather than the drastic option of adding equipment to its network design if it concerns need only be addressed until July 2, 2004.

10. One option that might be worth BellSouth’s consideration is tagging of the circuit or placing a comment in its database to distinguish the circuits (either UNE or special access) as a temporary work around before BellSouth begins a massive investment program. US LEC suggests, as another option, that BellSouth consider providing the same quality of service standards to all the commingled circuits that are equal or better than the standard that it utilizes for its reporting purposes. For the alleged short period of time that such requirements are necessitated, BellSouth seems to only provide the most onerous solution to address its concerns.

11. Finally, BellSouth asserts that the FCC intended that there be a 9-month transition period for the implementation of any new unbundling obligations that were imposed. US LEC notes that BellSouth does not hold the same position for a transition period for unbundled network elements that BellSouth is no longer required to provide. BellSouth proposes, in its TRO amendment, that US LEC would have thirty days to transition from a UNE to wholesale services in the event BellSouth need not provide access to the UNE. A failure to transition within such period would result in a disconnection of the service. US LEC is uncertain as to BellSouth’s reasoning that it should be provided a nine-month period to transition to allegedly “new” requirement whereas US LEC need only 30 days to meet the changing environment. The FCC should reject BellSouth’s interpretation of the purported transition period.

12. BellSouth has failed to meet its burden of showing that good cause exists for a waiver of its obligations for any length of time. The FCC had already decided that CLECs were entitled to the financial benefit of the converting special access circuits to EELs, provisioning new EELs and commingling access services and UNEs. The FCC should not undermine its findings by granting BellSouth's petition. Moreover, grant of such a waiver may place a greater financial burden on the CLECs than the alleged financial burden to BellSouth if the waiver were not granted.

WHEREFORE, US LEC prays that the Commission dismiss the Petition for Waiver, and require BellSouth to perform its legal obligations.

Respectfully submitted,

US LEC CORP.

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